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10
11 UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 vs.

15 JASON EDWARD THOMAS
16 CARDIFF

17 Defendant

18 And

19 LILIA MURPHY and BRIAN
20 KENNEDY

21 Sureties

Case No. 5:23-CR-00021-JGB

SURETIES' MEMORANDUM IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR ORDER
FORFEITING BAIL AND FOR
SUMMARY ADJUDICATION
OF OBLIGATION

Hearing Date: March 3, 2025

Courtroom: 1

Time: 2:00 p.m.

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Rules

Fed. R. Crim. P. 46	<i>passim</i>
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**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S
MOTION FOR ORDER FORFEITING BAIL AND FOR SUMMARY
ADJUDICATION OF OBLIGATION**

Sureties Lilia Murphy and Brian Kennedy (hereinafter "Sureties"), by and through their undersigned counsel, respectfully submit this response in opposition to the United States' Motion for Order Forfeiting Bail and for Summary Adjudication of Obligation (Dkt. 189). The Government seeks a forfeiture of bail and entry of judgment in the amount of \$530,000 based on the alleged bond violation of Defendant Jason Edward Thomas Cardiff, which would result in liability for the Sureties in the amounts of \$500,000 (Murphy) and \$30,000 (Kennedy).

For the reasons set forth below, the Sureties respectfully request that the Court deny summary adjudication of the Bondholder's rights to seek the mitigation and remission of the proposed forfeiture of their property under Fed. R. Crim. P. 46(f)(2). The Bondholders request an evidentiary hearing before decision on the Government's motion.

I. Background Facts

On February 5, 2025, the Court granted an Order Vacating Trial Date, Tolling of Speedy Trial Act, and Issuance of an arrest warrant. Dkt. 196. However, the Sureties submit that entry of a judgment is not automatic and that the Court retains discretion under Rule 46(f)(2) to set aside or remit forfeiture in whole or in part based on the circumstances of this case.

The facts of this case are unique. Mr. Cardiff was placed under arrest when he traveled from Ireland to the United States to attend his father's funeral. Bond was granted at \$530,000. Ms. Lilia Murphy agreed to pledge her home to secure \$500,000 of the bond as part of an appearance bond and Mr. Kennedy agreed to a \$30,000 appearance bond. The Court also provided for Stephen Cochell to have custody of

1 Mr.Cardiff and approved Mr. Cardiff to live with Ms. Murphy and Stephen Cochell.¹
2 Dkt. 21. The bond also set a curfew from 8:00 a.m. to 8:00 p.m. daily and to wear an
3 electronic monitoring device. *Id.*

4 The Court granted Mr. Cardiff leave to travel to Dublin after his wife suffered a
5 heart attack. Dkt. 87 He stayed ten days and complied fully with the Court's order.
6 On September 4, 2024, the Court granted Mr. Cardiff leave to visit Ireland to provide
7 support for his wife and eleven year old daughter. Dkt. 103, 105. Mr. Cardiff's request
8 indicated that he was going to visit a pulmonologist. Dkt. 103-1 at 5. On October 29,
9 2024, the Court entered an Order allowing Mr Cardiff fourteen days travel to assist his
10 wife and attend a medical appointment. Dkt. 122, 122-1. On November 15, 2025, Mr.
11 Cardiff requested an extension of his travel because of unanticipated health problems
12 and had scheduled an appointment with a cardiologist. Dkt. 125 at 2. He advised the
13 Court that Dr. M.S. referred him to Blackrock Medical Centre finding him "medically
14 unfit to fly until further notice. *Id.* Pretrial Services did not oppose the request. Dkt.
15 125 at 3. On December 13, 2024, Defendant asked for an additional extension of travel
16 for medical reasons. Dkt. 148. The Court granted this extension but indicated that,
17 absent extenuating circumstances, the Court was not inclined to grant future requests
18 to travel or extend travel. Dkt. 151.

19 From December 6, 2023 until his last departure to Ireland, Mr Cardiff was living
20 with Ms. Murphy and counsel complying fully with the Bond with electronic
21 monitoring, curfew and reporting to Pretrial Services. At that point, Mr. Cardiff had
22 periodic discussions with Ms. Murphy updating her on his health condition. While
23 living at Ms. Murphy's home, Ms. Murphy became aware that Mr. Cardiff had certain
24 symptoms and was concerned about Mr. Cardiff's health. **Exhibit A**, Murphy Dec. ¶¶s
25

26 ¹ Ms. Murphy later married Mr. Cochell. Mr. Cochell subsequently entered an
27 appearance as counsel for Mr. Cardiff. For purposes of this case, counsel will refer to
28 his wife as Ms. Murphy.

1 12-14. In or about November, 2024, Mr. Cardiff disclosed to Ms. Murphy that he had
2 experienced additional and more severe medical problems that needed treatment. Id.
3 at ¶ 15, 17.

4 On January 14, 2025, Defendant filed his Motion for an Order Extending
5 International Travel, or in the Alternative to Modify the Bond. Mr. Cardiff advised the
6 Court, and provided the Court with medical evidence that he was medically unfit to fly
7 back to the United States. Dkt. 162. Defendant's primary physician, Dr. M.S.
8 recommended a three-to-four-month treatment plan to assure that Mr. Cardiff could fly
9 safely without risking even more serious health consequences. Dkt. 171 at 2. Mr.
10 Cardiff submitted Dr. M.S.' report under seal and asked the Court to allow him to stay
11 the additional time to protect his health. Dkt 149, 175.

12 The Court deemed the evidence submitted by Dr. M.S. to be insufficient as her
13 report indicated that Mr. Cardiff's symptoms "could" pose a risk of serious injury and
14 that reduced cabin pressure and lower oxygen availability at altitude would greatly
15 increase the potential for ...complications. See Dkt. 171 at 4. On reconsideration,
16 Defendant submitted further evidence from Dr. M.S. However, the Court held that the
17 evidence was rejected because the email submission was not "new" evidence that could
18 not have been submitted under L.R. 7-18. Dkt. 171 at 2.

19 Both Ms. Murphy and Mr. Kennedy were aware that Mr. Cardiff became ill while
20 in Ireland and was granted extensions of time to seek evaluation medical treatment for
21 his medical condition. After the Court's ruling on reconsideration, the Sureties asked
22 Mr. Cardiff why he could not return but were told that he wanted to return but was
23 medically unfit to travel until further treatment was obtained to avoid risk of additional
24 injury or permanent harm to his physical health if he traveled. **Exhibit A**, Declaration
25 of Lilia Murphy ¶¶ 16, 19 (hereafter "Murphy Dec.") ; **Exhibit B**, Declaration of
26 Brian Kennedy ¶ 7 (hereafter "Kennedy Dec."). As set out below, the Bondholders
27 respectfully submit that they should not be punished for Mr. Cardiff's decision not to
28 return on January 19, 2025.

1
2
3 **II. Rule 46(f) Does Not Require Forfeiture of Property or Funds If Justice**
4 **Does Not Require Forfeiture.**

5 It is well established that the purpose of bail bonds is to make sure defendants
6 show up for court, not to punish them or their families if they fail to appear. *United*
7 *States v. Vaccarro*, 51 F.3d 189, 192 (9th Cir. 1988); *United States v Bass*, 573 F.2d 258,
8 260 (5th Cir 1978) (“The purpose of a bail bond is not punitive; it is to secure the presence
9 of the defendant”). As set out below, this court has the discretion to set aside a forfeiture
10 “in whole or in part” “if it otherwise appears that justice does not require the forfeiture.”

11 In *United States v. Nguyen*, 279 F.3d 1112, 1115 (9th Cir. 2002), the Court noted
12 that “The law on bail forfeiture is neither complex nor voluminous.” F.R. Crim. P. 46
13 provides that if there is a breach of a condition of a bond, the district court shall declare
14 a forfeiture of the bail.” However, Rule 46 (e)(2) and (4) also provides that a district
15 court:

16 (2) ...may direct that a forfeiture be set aside in whole or in part,
17 upon such conditions as the court may impose, if a person
18 released upon execution of an appearance bond with a surety is
19 subsequently surrendered by the surety into custody or if it
20 *otherwise appears that justice does not require the forfeiture....*
21 [and]

22 (4) ...may remit it in whole or in part under the [same]
23 conditions....

24 *Id.* (emphasis supplied)

25 The *Nguyen* court set out six non-exclusive factors that may be considered in
26 deciding whether to set aside or remit forfeiture of the bond. These factors include:
27 (1)The defendant’s willfulness in breaching a release condition; (2) the sureties’
28 participation in apprehending the defendant; (3) the cost, inconvenience, and prejudice
suffered by the government; (4) mitigating factors; (5) whether the surety is a
professional or a member of the family or friend; and (6) the appropriateness of the

1 bond amount.

2 In *United States v. Vickers*, 144 F. Supp. 3d 1146, 1150 (E.D. Cal.2015), the
3 Court noted that the purpose of the bail bond is not punitive. Rather a bond is to insure
4 that the accused will reappear at a later time. *Id.* citing *Vaccaro*, 51 F.3d at 192. The
5 *Vickers* court emphasized that the court must ensure that its decision remains free from
6 frustration or vindictiveness. *Id.* citing *United States v. Parr*, 594 F.2d 440, 444 (5th Cir.
7 1979). In *United States v. Amwest Sur. Ins. Co.*, 54, F.3d 601, 604 (9th Cir. 1995), the
8 Court suggested that a defendant's ultimate appearance is a ground for remittance, even
9 if he was absent in prior proceedings.

10 **A. Defendant's Willfulness in Breaching a Release Condition**

11 In *Nguyen*, defendant was arrested at work despite consistent claims that he could
12 not surrender himself because he was at home recuperating from surgery. *Id.* at 1116.
13 Similarly, in *United States v. Abernathy*, 757 F.2d 1012, 1015 (9th Circuit), the Court
14 found conduct to be willful where defendant fled nearly 1500 miles using aliases.

15 In stark contrast, Defendant was granted a court order allowing him to travel to
16 Ireland and was granted extensions to seek medical treatment. While the Court denied
17 further extensions, Defendant was advised by his doctors that he was medically unfit to
18 travel and that he would suffer greater injury if he returned to the United States. Dr.
19 M.S. provided a 3-4 month treatment plan. Dkt. 175. Defendant recognized that the
20 Court ordered his return but, at the time, concluded that if he returned without sufficient
21 treatment, he would potentially suffer greater health consequences resulting in
22 disability and lose his ability to support his family. Dkt 178, Defendant's Status
23 Report. Defendant fully intends to return to the United States. Exhibit C, Declaration
24 of Jason Cardiff ¶ 4. Dkt. 178 at 2.

25 The Court should not proceed with forfeiture of property or assets from innocent
26 third parties unless or until it becomes clear that Defendant does not intend to return to
27 the United States. This factor weighs in favor of the Sureties at this time.
28

1 **B. The Sureties Participation Apprehending Defendant**

2 While Ms. Murphy and Mr. Kennedy are not in a position to physically
3 apprehend Defendant. Both, however, have asked the defendant to obey the order and
4 return to the United States. Both were essentially told that Defendant wanted to return
5 to the United States but could not risk the health consequences. **Exhibit A**, Murphy
6 Dec. ¶ 19, **Exhibit B**, Kennedy Dec.¶ 7. This factor favors the Sureties.

7 **C. The Cost, Inconvenience, and Prejudice Suffered By The Government**

8 At this point, the Government has sustained limited cost or prejudice from
9 Defendant's absence on January 19, 2025. The cost of litigating pre-trial motions and
10 trial is a cost that would have been incurred in any event. Moreover, there is no
11 evidence that the Defendant intends to do anything but get treatment in Ireland and
12 return. Defendant states he intends to return to the United States within the next three
13 month (May, 2025). Defendant is still reporting to Pretrial Services and will continue
14 to do so upon return. This factor potentially favors the Government, but is entitled to
15 little weight when the failure to appear took place barely three weeks ago. This factor
16 currently favors the Sureties.

17 **D. Mitigating Factors**

18 The Court held a hearing on January 30, 2025 and then filed this motion seeking
19 forfeiture of property and funds. Ms. Murphy's home is worth more than \$500,000
20 and was purchased by her and her late husband, Leo Murphy, before he tragically died
21 in 2022. **Exhibit A**, Murphy Dec. ¶ 5. Ms. Murphy respects and obeys the law and
22 has been a law-abiding citizen her entire life. *Id.* at ¶ 4. Ms. Murphy felt compelled to
23 help. Because he had electronic monitoring, curfew conditions and was under
24 supervision of Pretrial Services supervision, Ms. Murphy was confident that she and
25 Steve Cochell would have control over the situation and be able to oversee Mr.
26 Cardiff's bond conditions. *Id.* at ¶ 7.

27 Ms. Murphy took Mr. Cardiff into her home and was aware that he complied
28 with the curfew and had a decent living situation. **Exhibit A** at ¶¶ 8-9. Over the course

1 of the last fourteen months, Ms. Murphy observed that Mr. Cardiff went on business
2 trips and returned without incident. *Id.* at 9.

3 In January, 2025, before the January 19, 2025 deadline and after the January 19,
4 2025 deadline, Ms. Murphy told Mr. Cardiff that he needed to return to Houston and
5 reminding him that her house would be subject to forfeiture if he did not return. **Exhibit**
6 **A** at ¶ 19. On those occasions, Mr. Cardiff made it clear that he wanted to return but
7 could not return to Houston unless the doctors in Ireland said he was fit to travel and
8 further stated that he would suffer greater and potentially irreversible damage to his
9 health if he flew before the doctors could treat him. *Id.* at ¶ 19.

10 Mr. Kennedy is a member of Redwood Scientific Technologies, Inc's Board of
11 Directors and has had frequent contact with Mr. Cardiff in that capacity. Mr. Kennedy
12 learned of Mr. Cardiff's health condition and urged him to return to the United States
13 to comply with the January 19, 2025 deadline. **Exhibit B**, Kennedy Declaration ¶7.
14 However, Mr. Cardiff told him that he would seriously jeopardize his health and
15 believed that he needed follow doctors' orders until he was found to be fit to travel. *Id.*
16 This factor favors the Sureties.

17 **E. Whether The Surety Is A Professional Or A Member Of The Family Or**
18 **Friend;**

19 If the surety is a defendant's family member or friend, rather than a professional
20 bondsman, this factor weighs in favor of setting aside the bond forfeiture." *United*
21 *States v Gifford*, 423 F.Supp. 819, (C.D. Cal. 2019); *United States v. Martinez*, 2013
22 U.S. Dist. LEXIS 161260, 2013 WL 6002441, at *7 (S.D. Cal. Nov. 12, 2013). *See*
23 *also United States v. Castaldo*, 667 F.2d 20, 21 (9th Cir. 1981) (explaining that
24 professional bondsmen are "experienced at bonding criminal defendants" and more
25 likely to be "aware of the risks of executing and filing a bond on [the defendant's]
26 behalf."). Ms. Murphy was a friend and not a professional bondsman. As such, this
27 factor favors setting aside the bond forfeiture.

1 **F. The Appropriateness of The Bond Amount.**

2 This factor addresses whether the bond amount was reasonable at the time of its
3 issuance. At the time of the initial bond hearing, the Government argued that Mr.
4 Cardiff fled to Ireland to avoid prosecution notwithstanding the fact that Mr. Cardiff
5 made no secret of his intention to move to Ireland and, in compliance with the FTC
6 order, gave notice to the FTC that he was moving to Dublin and later updates his
7 address.² **Exhibit C**, Declaration of Jason Cardiff ¶¶ 4-5. The argument that Mr
8 Cardiff fled to Ireland likely resulted in a substantial increase in the bond and the
9 Court's determination that it needed real property as security for his bond. The Sureties
10 believe that the bond amount should be remitted to account for this misrepresentation by
11 Government counsel.

12 The reasonableness of the bond should also be evaluated in light of motions that
13 seek dismissal of part or all of the indictment based on Supreme Court precedent. In
14 sum, the bond should have been lower where, as here, the indictment was either vague
15 or substantively defective. Pending before the Court are four motions that impact a
16 determination of whether the bond was reasonable³: (a) Defendant's Motion to Dismiss
17 Count Two of the Indictment (Dubin) Dkt 106; (b) Motion to Suppress Evidence (Dkt.
18 115); (c) Motion to Dismiss Counts 3 and 4 (Aguilar) Dkt. 134; and (d) Motion to
19 Dismiss Based on Double Jeopardy (Dkt. 135).

20 In the context of this case, due process requires that the Court rule on these
21 motions *before* determining bond forfeiture. *See United States v \$8850*, 461 U.S. 555,
22 564 (1983) (Due process is flexible regarding the right to be heard at a meaningful time
23 recognizing that the timing of a proceeding may impair a party's ability to defend the
24

25 _____
26 ² Counsel has ordered the transcript of the hearing to eliminate any doubt as to what
was said at the bond hearing.

27 ³ Sureties recognize that the Court indicated that it would issue decisions on the
28 pretrial motions at the January 30, 2025 hearing. Dkt. 198.

1 propriety of a forfeiture).

2 **G. The Facts Are Not Crystallized.**

3 As a practical matter, the facts are not set in stone and may change. While the
4 Government may take some satisfaction if they obtain an order forfeiting Ms. Murphy's
5 property and Mr. Kennedy's funds, Mr. Cardiff may be released to travel by his
6 physicians as they treat his condition. At that point, the Court and the sureties will
7 have expended a lot of time and resources on this issue and the Court will have to re-
8 evaluate its rulings on the bond. Ms. Murphy should not be subjected to the emotional
9 stress of losing her house where, as here, the facts may change within the next several
10 months. The Government will not suffer prejudice if the Court defers ruling on its
11 motion.

12 **III. Conclusion**

13 Rule 46(f) provides that the Court may set aside in whole or in part a bail
14 forfeiture if appears that justice does not require bail forfeiture. In sum, neither Ms.
15 Murphy nor Mr. Kennedy have first-hand knowledge of Mr. Cardiff's medical
16 condition and are not in a position to apprehend him. Both have asked Mr. Cardiff to
17 return to Houston and were told that he wanted to return but his doctors found him
18 medically unfit to travel and would suffer additional harm if he traveled before he
19 completed treatment. The Government is well aware of Mr. Cardiff's explanation for
20 not appearing at the January 30, 2025 hearing and that he intends to surrender as soon
21 as possible, presumably within the next three months when his treatment is concluded.
22 Dkt. 178. The Court vacated the pretrial conference and trial dates.⁴ Dkt. 196.

23 Based on the *Nguyen* factors, "justice does not require the forfeiture" of Ms.
24

25 ⁴ Barely three days after the January 30, 2025 hearing, the Government filed its Motion
26 to Forfeit Property. Dkt 189. The rush to secure a judgment and start executing on the
27 Sureties' property and assets appears calculated to punish people who are friendly with
28 Mr. Cardiff---not to secure his appearance.

1 Murphy's home and Mr. Kennedy's funds. In that vein, Sureties respectfully submit
2 that the process can be deferred or stayed for several months until Mr. Cardiff either
3 surrenders himself or does not. At that time, the Court will have more information and
4 be in a better position to render a decision that is fair to the Sureties.

5 **Dated:** February 10, 2024

6 **Respectfully submitted,**
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8
9 By: /s/ Stephen R. Cochell
10 Stephen R. Cochell

11 Attorney for Defendant
12 JASON EDWARD THOMAS CARDIFF
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SERVICE LIST

I HEREBY DECLARE THAT THE FOLLOWING COUNSEL HAVE BEEN SERVED WITH THIS DEFENDANT JASON CARDIFF'S NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE THROUGH THE COURT'S ECF NEXT GEN ELECTRONIC FILING SYSTEM:

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